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NOT TO BE PUBLISHED

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

THIRD APPELLATE DISTRICT

(Shasta)

THE PEOPLE, Plaintiff and Respondent, v. CORY MICHAEL ROCHESTER, Defendant and Appellant.	C058809 (Super. Ct. No. 06F09599)

Following the denial of his motion to suppress evidence, defendant pleaded no contest to possession of concentrated cannabis (Health & Saf. Code, § 11357) and was placed on informal probation for three years. He appeals, challenging the denial of his suppression motion. We conclude the motion was properly denied and affirm the judgment.

FACTS AND PROCEEDINGS

Shortly before 10:00 p.m. on October 6, 2006, Officer Brian Berg received a dispatch about a disturbance at an apartment complex on the 500 block of Hilltop Drive in Redding. In particular, Berg was informed a resident had called to report

that an unknown male was "banging" on her apartment door and was wearing gloves, and that the caller was concerned for her safety. Berg responded to the location and, as he was pulling into the apartment complex, received another dispatch that the suspect had gotten into a dark-colored Dodge Ram pickup truck and was leaving the parking lot. At the same time, Berg observed a similar truck driving toward him.

Berg illuminated his spotlight on the truck and observed two people inside. Berg got out of his patrol car and walked up to the passenger side of the truck. The driver, later identified as defendant, immediately apologized and said he had been looking for the female passenger but had gone to the wrong apartment. Berg observed that both defendant and the female were slow, lethargic and had droopy eyelids. When Berg asked defendant for identification, defendant was slow to respond. Berg suspected defendant might be intoxicated.

At that point, Officer Timothy Renault arrived and took over for Berg, who advised Renault of his suspicions regarding defendant's condition. Renault spoke with defendant and observed defendant was red in the face and sweating profusely. Renault asked defendant if he had consumed alcohol or drugs that day, and defendant responded no, but that he had taken some prescription medications. Renault asked defendant to perform some field sobriety tests. Defendant passed the first but failed the second. He then refused to take any further tests, complaining of knee and back pain.

Officer Renault arrested defendant for driving under the influence. A subsequent inventory search of the vehicle revealed a large amount of controlled substances.

Defendant was charged with possession of marijuana for sale (Health & Saf. Code, § 11359), sale or transportation of marijuana (*id.*, § 11360, subd. (a)), and driving under the influence (Veh. Code, § 23152, subd. (a)). He entered not guilty pleas. Defendant moved to suppress the evidence discovered in the search of his vehicle, arguing there was no reasonable suspicion to justify the initial detention. The motion was denied. The People then amended the information to add a count for possession of controlled cannabis, and defendant entered a plea of no contest to that charge. All remaining counts were dismissed, and defendant was sentenced as previously indicated.

DISCUSSION

Defendant contends the trial court erred in denying his motion to suppress the evidence discovered in his truck. He argues this evidence was the fruit of an illegal detention. The People respond that the detention was not illegal, because Officer Berg had reasonable suspicion to detain defendant in order to investigate two potential crimes: (1) creating a disturbance (Pen. Code, § 415), and (2) disorderly conduct (*id.*, § 647, subd. (c)). According to the People, Officer Berg "would have been negligent in fulfilling [his] peace officer responsibilities had [he] declined to make contact with

[defendant] merely because he had stopped 'banging' on the apartment door and gotten into his pickup truck before [Officer Berg] had arrived at the location where the call for assistance had originated from." We conclude the People have the better argument.

"For purposes of Fourth Amendment analysis, there are basically three different categories or levels of police 'contacts' or 'interactions' with individuals, ranging from the least to the most intrusive. First, there are what Justice White [in *Florida v. Royer* (1983) 460 U.S. 491 (plur. opn.)] termed 'consensual encounters' (*id.* [460] U.S. at p. [506] [75 L.Ed.2d at p. 243, 103 S.Ct. at p. 1329]), which are those police-individual interactions which result in no restraint of an individual's liberty whatsoever--i.e., no 'seizure,' however minimal--and which may properly be initiated by police officers even if they lack any 'objective justification.' (*Id.* [460] U.S. at p. [497] [75 L.Ed.2d at p. 236, 103 S.Ct. at p. 1324].) Second, there are what are commonly termed 'detentions,' seizures of an individual which are strictly limited in duration, scope and purpose, and which may be undertaken by the police 'if there is an articulable suspicion that a person has committed or is about to commit a crime.' ([*Id.* 460 U.S. at p. 498].) Third, and finally, there are those seizures of an individual which exceed the permissible limits of a detention, seizures which include formal arrests and restraints on an individual's liberty which are comparable to an arrest, and which are constitutionally permissible only if the police have

probable cause to arrest the individual for a crime. (*Id.* [460] U.S. at p. [499] [75 L.Ed.2d at p. 237, 103 S.Ct. at p. 1325].)" (*Wilson v. Superior Court* (1983) 34 Cal.3d 777, 784.)

The present matter involves the second type of police contact. "[I]n order to justify an investigative stop or detention the circumstances known or apparent to the officer must include specific and articulable facts causing him to suspect that (1) some activity relating to crime has taken place or is occurring or about to occur, and (2) the person he intends to stop or detain is involved in that activity. Not only must he subjectively entertain such a suspicion, but it must be objectively reasonable for him to do so: the facts must be such as would cause any reasonable police officer in a like position, drawing when appropriate on his training and experience [citation], to suspect the same criminal activity and the same involvement by the person in question." (*In re Tony C.* (1978) 21 Cal.3d 888, 893.)

There is no dispute here that Officer Berg had a sufficient basis to suspect defendant was the person involved in whatever activity had been reported. As he arrived at the apartment complex, Berg was informed the suspect had gotten into a dark-colored Dodge Ram truck and was leaving. Berg immediately observed the dark-colored Dodge truck about to exit the parking lot.

The question here is whether Officer Berg was aware of specific and articulable facts from which it may reasonably be suspected a crime had been committed or is occurring. The

People suggest there were two such crimes: creating a disturbance and disorderly conduct. Defendant argues that, while "[k]nocking loudly on the wrong door at ten o'clock at night" might be "rude behavior," any threat it posed had dissipated once defendant departed.

Implicit in defendant's argument is an assumption that the act of banging on an apartment door must constitute a threat before a police officer may investigate. Further implicit in defendant's argument is an assumption that such investigation is prohibited once the threat is removed. That is not the law.

A police officer who receives information about conduct sufficiently serious to prompt a call for assistance would be remiss in his obligations to the public not to investigate the matter. Such investigation obviously would include going to the scene and questioning those involved. In this instance, Officer Berg arrived on the scene and observed a truck matching the description of the one the person who did the banging had been seen getting into. The truck was about to leave the area. Officer Berg had no idea what the banging was all about except that it had been enough to scare the occupant.

"Although each case must be decided on its own facts, . . . [t]he guiding principle, as in all issues arising under the Fourth Amendment and under the California Constitution [citations] is 'the reasonableness in all the circumstances of the particular governmental invasion of a citizen's personal security.'" (*In re Tony C.*, *supra*, 21 Cal.3d at p. 892.) This necessarily "involves a weighing of (i) the public interest

served by the seizure, the degree to which the seizure advances the public interest, and the severity of the interference with individual liberty [citation] and (ii) the officer's reasonable suspicion that a crime has occurred or is occurring." (*In re James D.* (1987) 43 Cal.3d 903, 914.) "The possibility of an innocent explanation does not deprive the officer of the capacity to entertain a reasonable suspicion of criminal conduct. Indeed, the principal function of his investigation is to resolve that very ambiguity and establish whether the activity is in fact legal or illegal--to 'enable the police to quickly determine whether they should allow the suspect to go about his business or hold him to answer charges.'" (*In re Tony C.*, *supra*, 21 Cal.3d at p. 894.)

Officer Berg had been provided a specific articulable fact about some potentially illegal activity that had occurred at the apartment complex and had frightened one of the residents. Under these circumstances, public safety concerns outweighed the slight intrusion on defendant's privacy interests occasioned by the brief stop of defendant as he was departing the scene. We therefore conclude the trial court did not err in denying defendant's motion to suppress.

DISPOSITION

The judgment is affirmed.

HULL, J.

We concur:

SCOTLAND, P. J.

ROBIE, J.